

## Internal Revenue Service

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CC:CORP:B04

PLR-141177-07

Date:

February 13, 2008

### LEGEND:

LLC 1 =

LLC 2 =

LLC 3 =

Newco 1 =

Newco 2 =

Newco 3 =

Corporation X =

Sub 1 =

PLR-141177-07

Business =

Country =

Exchange =

Date 1 =

Date 2 =

Date 3 =

a =b =c =d =Amount 1 =Amount 2 =Amount 3 =Amount 4 =

Dear :

This letter responds to your authorized representative's letter dated September 12, 2007, requesting rulings under § 351 of the Internal Revenue Code ("Code") and §1.367(a)-3(c)(1) of the Income Tax Regulations regarding a proposed transaction. The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

## FACTS

LLC 1 is owned by individuals and treated as a partnership for federal income tax purposes. LLC 1 is engaged in Business and wholly owns LLC 2 and LLC 3.

Corporation X, a Country corporation, wholly owns Sub 1. Corporation X is also engaged in Business. On Date 2, Corporation X became a publicly traded company in Country through an initial public offering on Exchange. Through the initial public offering, Corporation X obtained cash proceeds of Amount 1.

As of Date 3, the market capitalization of Corporation X was estimated to be Amount 2. This was computed by multiplying the total amount of outstanding shares of Corporation X on Exchange as of Date 3 by the trading price of a share of Corporation X on Exchange as of Date 3.

Also as of Date 3, the fair market value of Newco 1, described below, was estimated to be Amount 3. This fair market value was derived from the fact that the shareholders of Newco 1 will receive approximately a percent of the common stock of Newco 3 in the transactions described below, such that the fair market value of Newco 1 should be equal to a percent of the fair market value of Newco 3. The fair market value of Newco 3 can be determined, in turn, based upon the market capitalization of Corporation X (i.e., Corporation X makes up b percent of the fair market value of Newco 3).

Excluding the proceeds from the initial public offering of Corporation X on Date 2, the fair market value of Corporation X as of Date 3 (Amount 2 minus Amount 1, or Amount 4) was still larger than the fair market value of Newco 1 as of Date 3 (Amount 3).

## PROPOSED TRANSACTIONS

The parties propose to combine the businesses of LLC 1 and Corporation X under a newly formed Country holding company that will be listed on Exchange. The parties intend to effect the combination of LLC 1 and Corporation X through the following steps (all of which will occur substantially contemporaneously) (the "Proposed Transactions"):

- (i) The equity owners of LLC 1 will contribute their LLC 1 interests to Newco 1, a newly formed domestic corporation, in exchange for all of Newco 1's common stock ("Contribution 1").
- (ii) Solely for purposes of facilitating Contribution 3 (described in Step (iii) below) and in accordance with the requirements of Country corporate law, the shareholders of Newco 1 will contribute their Newco 1 common stock to Newco

PLR-141177-07

2, a newly formed Country corporation, in exchange for all of Newco 2's common stock ("Contribution 2").

Newco 2 will have no rights other than the stock of Newco 1 and will not conduct any activities other than for purposes of completing the Proposed Transactions under Country law.

- (iii) The shareholders of Newco 2 will contribute their Newco 2 common stock to Newco 3, a newly created Country corporation, in exchange for approximately a percent of the common stock of Newco 3, and, simultaneously and as part of the same plan and pursuant to a binding agreement, the shareholders of Corporation X will contribute their Corporation X stock to Newco 3 in exchange for approximately b percent of the common stock of Newco 3 (together, "Contribution 3").
- (iv) Within c days following Contribution 3, Newco 2 will be merged with and into Newco 3 in accordance with Country corporate law, at which time Newco 2 will cease to exist and Newco 1 will become a wholly owned subsidiary of Newco 3.

## REPRESENTATIONS

### Contribution 1

The following representations are made regarding Contribution 1:

(a1) No stock or securities will be issued for services rendered to or for the benefit of the transferee in connection with the Proposed Transactions; provided, however, that pursuant to a pre-existing contractual commitment of LLC 1, approximately d percent of the stock issued by Newco 1 will be issued to a former owner of LLC 1 pursuant to an agreement dated Date 1 under which the former owner relinquished its interest in LLC 1.

(b1) No stock or securities will be issued for indebtedness of the transferee that is not evidenced by a security or for interest on indebtedness of the transferee which accrued on or after the beginning of the holding period of the transferors of the debt.

(c1) The transfer is not the result of the solicitation by a promoter, broker, or investment house.

(d1) The transferors will not retain any rights in the property transferred to the transferee.

(e1) The adjusted basis and the fair market value of the assets to be transferred by the transferors to the transferee will, in each instance, be equal to or

PLR-141177-07

exceed the sum of the liabilities to be assumed by the transferee plus any liabilities to which the transferred assets are subject.

(f1) The liabilities of the transferors to be assumed by the transferee were incurred in the ordinary course of business and are associated with the assets to be transferred.

(g1) There is no indebtedness between the transferee and the transferors and there will be no indebtedness created in favor of the transferors as a result of the transaction.

(h1) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(i1) All exchanges will occur on approximately the same date.

(j1) There is no plan or intention on the part of the transferee to redeem or otherwise reacquire any stock or indebtedness to be issued in the proposed transaction.

(k1) Taking into account any issuance of additional shares of transferee stock; any issuance of stock for services; the exercise of any transferee stock rights, warrants, or subscriptions; a public offering of transferee stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of the transferee to be received in the exchange (other than Contribution 2), the transferors will be in "control" of the transferee within the meaning of § 368(c).

(l1) Each transferor will receive stock, securities, or other property approximately equal to the fair market value of the property transferred to the transferee or for services rendered or to be rendered for the benefit of the transferee.

(m1) The transferee will remain in existence and retain and use the property transferred to it in a trade or business.

(n1) There is no plan or intention by the transferee to dispose of the transferred property other than in the normal course of business operations.

(o1) Each of the parties to the transaction will pay its or his/her own expenses, if any, incurred in connection with the Proposed Transactions.

(p1) The transferee will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).

PLR-141177-07

(q1) The transferor is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.

(r1) The transferee will not be a “personal service corporation” within the meaning of § 269A.

(s1) The total fair market value of the assets transferred by the transferors to Newco 1 will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Newco 1 in connection with the exchange, (ii) the amount of any liabilities owed to Newco 1 by the transferors that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock permitted to be received under § 351(a) without the recognition of gain) received by the transferors in connection with the exchange. The fair market value of the assets of Newco 1 will exceed the amount of its liabilities immediately after the exchange.

(t1) Each equity owner of LLC 1 holds his or her LLC 1 interest as a capital asset within the meaning of § 1221.

### Contribution 3

In connection with Contribution 3, the following representations are made based on the assumption that Newco 2 will be disregarded for federal income tax purposes so that the contribution of Newco 1 stock to Newco 2 followed by the contribution of Newco 2 stock to Newco 3 will be treated as a contribution of Newco 1 stock to Newco 3 in exchange for Newco 3 stock simultaneously with the transfer of the Corporation X stock to Newco 3:

(a2) No stock or securities will be issued for services rendered to or for the benefit of the transferee in connection with the Proposed Transactions.

(b2) No stock or securities will be issued for indebtedness of the transferee that is not evidenced by a security or for interest on indebtedness of the transferee which accrued on or after the beginning of the holding period of the transferors of the debt.

(c2) The transfer is not the result of the solicitation by a promoter, broker, or investment house.

(d2) The transferors will not retain any rights in the property transferred to the transferee.

(e2) The adjusted basis and the fair market value of the assets to be transferred by the transferors to the transferee will, in each instance, be equal to or

PLR-141177-07

exceed the sum of the liabilities to be assumed by the transferee plus any liabilities to which the transferred assets are subject.

(f2) The liabilities of the transferors to be assumed by the transferee were incurred in the ordinary course of business and are associated with the assets to be transferred.

(g2) There is no indebtedness between the transferee and the transferors and there will be no indebtedness created in favor of the transferors as a result of the transaction.

(h2) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(i2) All exchanges will occur on approximately the same date.

(j2) There is no plan or intention on the part of the transferee to redeem or otherwise reacquire any stock or indebtedness to be issued in the proposed transaction.

(k2) Taking into account any issuance of additional shares of transferee stock; any issuance of stock for services; the exercise of any transferee stock rights, warrants, or subscriptions; a public offering of transferee stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of the transferee to be received in the exchange, the transferors will be in "control" of the transferee within the meaning of § 368(c).

(l2) Each transferor will receive stock, securities, or other property approximately equal to the fair market value of the property transferred to the transferee or for services rendered or to be rendered for the benefit of the transferee.

(m2) The transferee will remain in existence and retain and use the property transferred to it in a trade or business.

(n2) There is no plan or intention by the transferee to dispose of the transferred property other than in the normal course of business operations.

(o2) Each of the parties to the transaction will pay its or his/her own expenses, if any, incurred in connection with the proposed transaction.

(p2) The transferee will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).

PLR-141177-07

(q2) The transferor is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.

(r2) The transferee will not be a “personal service corporation” within the meaning of § 269A.

(s2) The total fair market value of the assets transferred by the transferors to Newco 3 will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Newco 3 in connection with the exchange, (ii) the amount of any liabilities owed to Newco 3 by the transferors that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock permitted to be received under § 351(a) without the recognition of gain) received by the transferors in connection with the exchange. The fair market value of the assets of Newco 3 will exceed the amount of its liabilities immediately after the exchange.

#### International Representations

The following representations are made with respect to the taxpayer’s requested rulings under § 367(a)(1):

(a3) “U.S. transferors” (as defined in § 1.367(a)-3(c)(5)(v)) will, in the aggregate, receive, actually or constructively, 50 percent or less of both the total voting power and the total value of the stock of Newco 3 following Contribution 3.

(b3) Officers, directors and “five-percent target shareholders” (as defined in § 1.367(a)-3(c)(5)(iii)) of Newco 1 will own, actually or constructively, 50 percent or less of each of the total voting power and the total value of the stock of Newco 3 following Contribution 3.

(c3) Corporation X or one or more of its “qualified subsidiaries” or “qualified partnerships” (as defined in § 1.367(a)-3(c)(5)(vii) and (viii)) will have been engaged in the active conduct of a trade or business outside the United States, within the meaning of § 1.367(a)-2T(b)(2) and (3), for the entire 36-month period immediately preceding Contribution 3.

(d3) At the time of Contribution 3, neither the transferors of the stock of Newco 1 or Corporation X nor Newco 3 (including each qualified subsidiary or qualified partnership of Newco 3) will have an intention to substantially dispose of or discontinue all of such trades or businesses.

(e3) None of the assets that will have been acquired outside the ordinary course of business by Newco 3 or any of its qualified subsidiaries or qualified



PLR-141177-07

partnerships within the 36-month period preceding Contribution 3 will have been acquired for the principal purpose of satisfying the “substantiality test” of § 1.367(a)-3(c)(3)(iii).

(f3) At the time of Contribution 3, the fair market value of Corporation X will be at least equal to the fair market value of Newco 1 within the meaning of § 1.367(a)-3(c)(3)(iii)(A).

(g3) Newco 1 and Newco 3 will comply with the reporting requirements set forth in § 1.367(a)-3(c)(6).

## **RULINGS**

### Contribution 1

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to Contribution 1:

- (1) The equity owners of LLC 1 will recognize no gain or loss on Contribution 1 (§§ 351(a) and 357(a)).
- (2) The basis of the Newco 1 common stock received by each equity owner of LLC 1 will be the same as the basis of the LLC 1 interests transferred to Newco 1, reduced by LLC’s liabilities assumed by Newco 1, the release from which is treated as a payment of money to the equity owners of LLC 1 (§ 358(a)(1) and (d) and § 752(d) and Rev. Rul. 84-111, 1984-2 C.B. 88).
- (3) The holding period of the Newco 1 common stock received by each equity owner of LLC 1 will include the period during which the equity owner held his or her LLC 1 interests exchanged therefor, except that the holding period of the Newco 1 common stock that is received by the equity owners of LLC 1 in exchange for their interests in § 751 assets of LLC 1 that are neither capital assets nor § 1231 assets begins on the day following the date of the exchange (§ 1223(1) and Rev. Rul. 84-111).
- (4) Newco 1 will recognize no gain or loss on Contribution 1 (§ 1032(a)).

### Contribution 3

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to Contribution 3:

- (5) For federal income tax purposes, the separate existence of Newco 2 will be disregarded so that the contribution of Newco 1 stock to Newco 2 followed by the

PLR-141177-07

contribution of Newco 2 stock to Newco 3 will be treated as a contribution of Newco 1 stock to Newco 3 in exchange for approximately a percent of the common stock of Newco 3 simultaneously with the transfer of the stock of Corporation X to Newco 3.

- (6) The shareholders of Newco 1 will recognize no gain or loss on Contribution 3 (§ 351(a)).
- (7) The basis of the Newco 3 common stock received by each shareholder of Newco 1 in Contribution 3 will be the same as the basis of the Newco 1 common stock transferred to Newco 3 (§ 358(a)(1)).
- (8) The holding period of the Newco 3 common stock received by each shareholder of Newco 1 in Contribution 3 will include the period during which the shareholder held his or her Newco 1 common stock exchanged therefor, provided that such Newco 1 common stock is held as a capital asset on the date of Contribution 3 (§ 1223(1)).

#### International Rulings

The following rulings are based on the assumption that for purposes of applying the substantiality test of § 1.367(a)-3(c)(3)(iii)(A), the fair market value of Corporation X does not include the proceeds from its initial public offering on Date 2 or any other assets that should be excluded under § 1.367(a)-3(c)(3)(iii)(B). Based solely on the information submitted and the representations and assumptions set forth above, we rule as follows under § 367(a)(1):

- (9) The transfers of stock of Newco 1 by U.S. persons in exchange for the stock of Newco 3 will qualify for an exception to § 367(a)(1) under § 1.367(a)-3(c)(1).
- (10) Any U.S. person transferring stock of Newco 1 who is a 5 percent transferee shareholder (as defined in § 1.367(a)-3(c)(5)(ii)) will qualify for an exception to § 367(a) upon entering into a 5-year gain recognition agreement pursuant to § 1.367(a)-8.

#### **CAVEATS**

We express no opinion about the tax treatment of the Proposed Transactions under other provisions of the Code and regulations or on the tax treatment of any condition existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

PLR-141177-07

- (i) The federal income tax treatment of the transfer in Contribution 1 of approximately d percent of Newco 1 stock to a former owner of LLC 1 pursuant to an agreement dated Date 1 under which the former owner relinquished its interest in LLC 1;
- (ii) The adjustments to earnings and profits or deficits in earnings and profits, if any, in any of the transactions to which §§ 367(a) or (b) apply;
- (iii) To the extent not otherwise specifically ruled upon above, any other consequences under § 367 on any transaction described in this ruling letter; and
- (iv) Whether any or all of the above-referenced foreign corporations are passive foreign investment companies within the meaning of § 1297(a). If it is determined that any such corporations are passive foreign investment companies, no opinion is expressed with respect to the application of §§ 1291 through 1298 to the proposed transactions. In particular, in a transaction in which gain is not otherwise recognized, regulations under § 1291(f) may require gain recognition notwithstanding any other provisions of the Code.

### **PROCEDURAL STATEMENTS**

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Lewis K Brickates  
Chief, Branch 4  
Associate Chief Counsel (Corporate)